



May 15, 2001

Mr. Richard L. Muller, Jr.
Vinson & Elkins
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2300 First City Tower
1001 Fannin Street
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OR2001-1997

Dear Mr. Muller:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147229.

The Fort Bend County Child Advocates, doing business as Child Advocates of Fort Bend County ("Child Advocates"), which you represent, received a request for "[a]ll files, reports, audio recordings, video recordings and any and all other documents, obtained in any investigation, relating" to the requestor's children. You indicate that the information responsive to this request consists of information relating to two investigations conducted by Child Advocates in February 2000 and January 2001 respectively. With respect to the February 2000 investigation information, you claim that this office has already ruled that Child Advocates must withhold the information. With respect to the January 2001 investigation information, you claim that the information is confidential under section 264.408 of the Family Code. We have considered your arguments and reviewed the submitted information.

You state that this office determined in Open Records Letter No. 2000-4845 (2000) that the case file for the February 2000 investigation was confidential and not subject to disclosure under sections 261.201 and 264.408 of the Family Code. You indicate that Child Advocates will rely on Open Records Letter No. 2000-4845 (2000) to withhold the case file for the February 2000 investigation. Assuming that the four criteria for a "previous determination" by this office established in Open Records Decision No. 673 (2001) have been met, we agree that Child Advocates must withhold this information in accordance with the previous ruling.¹

¹The four criteria for this type of "previous determination" are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. See Open Records Decision No. 673 (2001).

You next contend that the case file for the January 2001 investigation is confidential under section 264.408 of the Family Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 264.408 of the Family Code provides:

(a) The files, reports, records, communications, and working papers used or developed in providing services under this chapter are confidential and not subject to public release under Chapter 552, Government Code, and may only be disclosed consistent with this chapter. Disclosure may be to:

(1) the department, department employees, law enforcement agencies, prosecuting attorneys, medical professionals, and other state agencies that provide services to children and families; and

(2) the attorney for the child who is the subject of the records and a court-appointed volunteer advocate appointed for the child under section 107.031.

Thus, section 264.408 provides that certain information used or developed in providing services under chapter 264 of the Family Code, which concerns child welfare services, is confidential. Section 264.408 also explicitly provides for circumstances in which such confidential information may be disclosed. *See* Fam. Code § 264.408(a)(1), (2). You indicate that Child Advocates' Children's Advocacy Center is a children's advocacy center established pursuant to chapter 264 of the Family Code. Furthermore, you state that the Children's Advocacy Center compiled the submitted information as a result of a January 2001 investigation of suspected child abuse. Based on your statements and our review of the information, we conclude that the submitted information is confidential under section 264.408 of the Family Code. Furthermore, it does not appear that the provisions allowing for the disclosure of this information apply to this requestor. *See* Fam. Code § 264.408(a)(1), (2). Therefore, Child Advocates must withhold the submitted information under section 552.101 of the Government Code.

In summary, you must withhold the requested information relating to the February 2000 investigation to the extent this office has issued a previous determination, as defined in Open Records Decision No. 673, requiring you to withhold the information. Furthermore, you must withhold the requested information relating to the January 2001 investigation under section 264.408 of the Family Code in conjunction with section 552.101 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 147229

Encl: Submitted documents

cc: Mr. Gary W. Gates, Jr.
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(w/o enclosures)